

LEG/SUB  
EXHIBIT11 MAR 1980  
OCA 86-0720

NOTE FOR: Deputy Director for Intelligence

FROM: David D. Gries  
Director, Office of Congressional Affairs

SUBJECT: Confirmation Hearings--Misuse of Official  
Position or Information for Private Financial  
Gain--Conflict of Interest

1. At confirmation hearings nominees are sometimes asked questions about measures taken by their agencies to prevent the misuse of official position or information for private financial gain. In the event that such a question is asked about the CIA you should attempt to make some or all of the following points:

- Federal statutes, Executive orders, and Agency regulations strictly prohibit misuse of public authority or official information for private financial gain.
- All agency employees are advised when they begin work and annually thereafter of the legal prohibitions on misuse of public authority or official information for private financial gain.
- All senior Agency officials, and other Agency officers and employees whose duties might be likely to expose them to potential conflicts of interest, file annual financial disclosure reports which the Agency scrutinizes to ensure that no conflict exists between private interests and Agency duties
- The Agency redresses noncriminal violations of conflict of interest laws and regulations through the Agency personnel discipline system after investigation by the Inspector General, when appropriate. If the conflict of interest situation involves a possible violation of federal criminal laws, the Agency reports the matter to the Attorney General and the Office of Government Ethics.

2. Attached is a supporting memorandum of law as well as a copy of the Ethics in Government Act of 1978 and its implementing regulations.

SIGNED

David D. Gries

Attachment:  
as stated

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OCA 86-0721

NOTE FOR: Deputy Director for Intelligence

FROM: David D. Gries  
Director, Office of Congressional Affairs

SUBJECT: Memorandum of Law - Conflicts of Interest

1. Criminal Penalties for Official Acts Affecting a Personal Financial Interest. An officer or employee of the Executive Branch who participates personally and substantially as a government officer or employee in any matter in which, to his knowledge, he, his spouse, his minor child, his partner, or an organization with which he has financial or fiduciary ties, has a financial interest, commits a crime punishable by up to two years' imprisonment or a \$10,000 fine, or both. 1/ An officer or employee can safely avoid the possibility of criminal liability by fully disclosing his financial interest to the official responsible for appointments to his position 2/ and obtaining from that official a written determination that his interest is not so substantial as to be deemed likely to affect the integrity of his services. 3/ The statutory criminal prohibition does not bar use for private financial gain of official information not available to the public.

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1/ 18 U.S.C. §208(a) (Supp. III 1979). Note that the offense does not require that the employee's financial interest actually have benefited from the employee's action for that action to be criminal.

2/ For Agency officers and employees, the DCI is the responsible official. See

3/ 18 U.S.C. § 208(b) (Supp. III 1979). This subsection also permits exemption from the requirement to submit questionable financial interests to the appointing official for a substantiality determination, by a published general rule or regulation categorizing the financial interest as too remote or insubstantial to affect the integrity of services.

2. Executive Order Restrictions on Use of Official Position or Information for Private Gain. Executive Order 11222 provides in part that "employees may not (a) have direct or indirect financial interests that conflict substantially, or appear to conflict substantially, with their responsibilities and duties as federal employees, or (b) engage in, directly or indirectly, financial transactions as a result of, or primarily relying upon, information obtained through government employment." 4/ The Order further provides that "an employee shall not directly or indirectly make use of, or permit others to make use of, for the purpose of furthering a private interest, official information not made available to the general public." 5/ These provisions forbid federal employees from misusing their authority or the information to which they have access for private financial gain. 6/ Agencies may invoke administrative disciplinary sanctions to punish violations of these conflict of interest provisions.

3. Financial Disclosure Requirements. Officers of the Executive Branch in positions classified at or above the GS-16 level or equivalent file annual financial disclosure statements with designated agency ethics officials in their employing agencies. 7/ The public has access to these financial disclosure statements of senior officials, except for the statements of U.S. intelligence personnel. 8/

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4/ 18 U.S.C.A. §201 note, §203 (1969, 1982 pocket part).

5/ Id., §205. It should be noted that the ban on use of nonpublic official information to further a private interest is not limited to use to further a private financial interest.

6/ Executive Order 11222 contains additional restrictions to avoid related conflicts of interests, such as acceptance of gifts from people involved in the employee's agency's activities and accepting inappropriate outside employment. Id., §§ 201 and 202.

7/ 5 U.S.C. App. § 201 (Supp. III 1979). Members of the uniformed services file reports with the relevant departmental secretary.

8/ See 5 U.S.C. App. §205(a) (Supp. III 1979). The subsection also permits filing additional reports necessary to maintain the cover of intelligence personnel.

(NOTE: The statements of the DCI, DDCI, and the designated agency ethics official, the Deputy General Counsel, are subject to public access.) The President has statutory authority to require lower ranking officers and employees to file confidential financial disclosure reports, which he has delegated to the Office of Personnel Management. 9/ In accordance with this delegated authority and the regulations of the Office of Personnel Management, the Agency requires large groups of Agency personnel to file confidential financial disclosure reports. 10/ Agency personnel who fall within any of the following categories file confidential financial disclosure reports annually with their Directorate or Independent Office:

- (a) personnel paid at an Executive Schedule salary level or equivalent;
- (b) personnel classified at or above the GS-13 level or equivalent in positions involving contracting or procurement, grants or subsidies, auditing private enterprises, or other activities having an economic impact on private enterprises; or,
- (c) personnel classified at or above the GS-13 level or equivalent required by their Directorate of Office to report financial interests to avoid conflicts of interest. 11/

4. Agency Action to Prevent Misuse of Official Position of Information for Private Financial Gain. Upon entering on duty with the Agency, each officer or employee reads the Agency's Handbook of Required Regulatory Readings  and signs a statement acknowledging that he has read it. In addition, each year Agency officers and employees must reread the Handbook and initial a routing sheet attached to the Handbook advises employees in plain English of the contents of statutes and Executive Orders prohibiting conflicts of interest and of financial disclosure requirements. 12/ The Handbook also clearly expresses a prohibition on unauthorized

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9/ 5 U.S.C. App. §207 (Supp. III 1979) and Executive Order 11222, §402. The OPM implementing regulations appear at 5 C.F.R. Part 734 (1985).

10/

11/ Id.

12/

use of official information, which includes using official information for personal benefit or disclosing it to others for their personal benefit. 13/ Finally, the Handbook contains an Agency Code of Conduct which summarizes law and policy applicable to present and former employees with respect to conflicts of interest (copy attached). 14/ In addition to assuring employee awareness of the prohibitions on conflicts of interest, the Agency requires supervisors to report real or apparent conflicts of interest to their Directorates or Offices for referral to the Office of Inspector General. 15/ Furthermore, the heads of Directorates and Offices scrutinize the financial disclosure statements many Agency employees are required to file to assure that their duties do not conflict with their financial interests. 16/ Should Agency officials become aware that Agency employees may possibly have violated federal criminal laws on conflicts of interest, they report such possible violations to the Attorney General and the Office of Government Ethics through the Office of General Counsel. 17/

5. A comprehensive list of the relevant conflicts of interest statutes and Executive Order provisions are attached.

*Signed,*

David D. Gries

Attachment:  
as stated

13/ Id., para. 5.

14/ Id., para 30.

15/

16/ Id.

17/ Executive Order 12333, §1.7(a), 48 Fed. Reg. 59947 (1981).

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